

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**



**FINANCE DOCKET NO. 35128
THE PORT OF SEATTLE
ACQUISITION EXEMPTION – CERTAIN ASSETS OF BNSF RAILWAY COMPANY**

**DOCKET NO. AB-6 (SUB-NO. 463X)
BNSF RAILWAY COMPANY
ABANDONMENT EXEMPTION IN KING COUNTY, WASHINGTON**

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**RESPONSE OF BNSF RAILWAY COMPANY, PORT OF SEATTLE AND KING
COUNTY, WASHINGTON
TO REQUEST FOR INFORMATION IN DOCKET NO. AB-6 (SUB-NO. 465X)**

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Dated: September 18, 2008

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WASHINGTON
TO REQUEST FOR INFORMATION IN DOCKET NO. AB-6 (SUB-NO. 465X)**

The BNSF Railway Company (“BNSF”), Port of Seattle (“Port”) and King County, Washington (“King County”) hereby submit this joint Response (the “Joint Response”) to the request for information included in the Notice issued by the Board in Docket No. AB-6 (Sub-No. 465X), 73 Fed.Reg. 51047 (August 29, 2008) (the “August 29 Notice”).

BACKGROUND

The *August 29 Notice* related to a Petition for Exemption in which BNSF sought authority to abandon a 12.55-mile segment of the Woodinville Subdivision from milepost 11.25 near Wilburton to milepost 23.80 in Woodinville, King County, Washington. The Board noted that two other proceedings involving BNSF had been filed concerning the Woodinville Subdivision: (1) *The Port*

of Seattle – Acquisition Exemption – Certain Assets of BNSF Railway Company, STB Finance Docket No. 35128 (Service Date June 20, 2008) (“*Port of Seattle*”), in which the Port filed a notice of exemption to acquire from BNSF the right-of-way, track, and other property and physical assets on the Woodinville Subdivision between milepost 23.80 and milepost 38.25; and (2) *The Burlington Northern and Santa Fe Railway Company – Abandonment Exemption – In Snohomish County, WA*, STB Docket No. AB-6 (Sub-No. 422X) (Service Date July 2, 2004), in which BNSF initially sought authority to abandon a 0.99 mile segment from milepost 38.01 to 39.00 (the “*BNSF Snohomish Abandonment*”), and pursuant to which BNSF ultimately consummated abandonment of the segment from milepost 38.25 to milepost 39.00, retaining the segment from milepost 38.01 to milepost 38.25 as an active rail line.¹

Additionally, the Board has asked about the relationship between these transactions and a Modified Certificate of Public Convenience and Necessity it issued with respect to a segment that is not contiguous to the segments just described. *GNP Rly Inc – Modified Rail Certificate – In Snohomish County, WA*, STB Finance Docket No. 35151 (Service Date August 13, 2008). That is a separate and wholly independent proceeding, and neither BNSF nor the Port nor King County is a party to that transaction or the proceeding. GNP Rly, Inc. (“GNP”) sought a Modified Certificate of Public Convenience and Necessity to lease and operate service over an abandoned segment of the Woodinville Subdivision owned by Snohomish County, Washington, from milepost 39.10 to approximately milepost 39.30, a distance of approximately 0.20 mile.²

In the *August 29 Notice*, the Board requested that BNSF, the Port, King County and other interested persons, if any, provide information to supplement filings in the record involving the

¹ BNSF Notice of Consummation, AB-6 (Sub-No. 422X) (Filed Date July 21, 2008)

² GNP Railway’s Modified Certificate applies to part of a longer line authorized for abandonment by the Interstate Commerce Commission over 22 years ago *Burlington Northern Railroad Company-Exemption-Abandonment in Snohomish County, WA*, Docket No. AB-6 (Sub-No. 280X) (Service Date March 12, 1986)

Woodinville Subdivision segments to clarify the interrelationship (or independence, as the case may be) of the various proceedings. The following explains the multi-faceted transactions, and the relationship among the proceedings that have been and will be commenced with respect to them.

**SUMMARY OF BNSF, PORT AND KING COUNTY PROCEEDINGS BEFORE THE
BOARD**

Following are descriptions of the proposed transactions (the “BNSF Transactions”), including their relationship to one another, and the corresponding proceedings which have commenced or will be commenced before this Board. As the following descriptions indicate, the Port will acquire from BNSF (1) a continuous 33.25 mile-long corridor along the Woodinville Subdivision extending from milepost 5.00 in Kenndale to milepost 38.25 in Snohomish and (2) the 7.30 mile-long Redmond Spur, which intersects the Woodinville Subdivision at milepost 23.80. With respect to the northernmost segment, between milepost 23.80 and milepost 38.25 (the “Freight Portion”), BNSF will retain an exclusive freight easement.³ BNSF has sought authority to abandon and will enter into a trail use agreement with King County for the remaining segments (the “Railbanking Segments”).⁴ The Port will grant King County an easement to permit King County to fulfill its trail use responsibilities. King County will also acquire BNSF’s reactivation right with respect to the Railbanking Segments. BNSF, the Port and King County expect to consummate the BNSF Transactions as soon as feasible after September 30, 2008, once all of the required approvals from this Board have been obtained. An index of relevant proceedings and pleadings is attached hereto as **Exhibit A**. On the closing date, the following simultaneous events will occur:

³ BNSF will transfer that freight easement to a third party operator. At the appropriate time, that operator will comply fully with all regulatory requirements.

⁴ The segment of the Woodinville Subdivision from Milepost 10.6 to Milepost 11.25 (the “Wilburton Segment”) has been fully abandoned and is therefore no longer under the Board’s jurisdiction. *BNSF Railway Company – Abandonment Exemption – In King County, WA* – STB Docket No. AB-6 (Sub-No. 453X) Notice of Consummation (Filed March 10, 2008). BNSF will transfer the Wilburton Segment to the Port along with the Railbanking Segments.

Freight Portion Transactions:

1. BNSF will transfer its interest in the right-of-way, track, fixtures and other physical assets of the Freight Portion to the Port. The proceeding relating to this transaction is Finance Docket No. 35128, *Port of Seattle*, involving the Port's request for an exemption to acquire BNSF's real property interests and physical assets along the Freight Portion, from milepost 23.80 north to milepost 38.25 in King County and Snohomish County, Washington. The exemption became effective as of July 4, 2008. The Port has filed a Motion to Dismiss the Exemption in Finance Docket No. 35128, which is pending before the Board.

2. BNSF will transfer its operating easement over the Freight Portion to a third party operator, who will have been selected prior to closing. The third party operator will file for authority to acquire the right to operate over the Freight Portion.

Railbanking Transactions:

3. BNSF will secure authorization for abandonment of, and will transfer its interest in the right-of-way, track, fixtures and other physical assets of, the Railbanking Segments to the Port. Since BNSF will have obtained abandonment and railbanking authority for the Railbanking Segments before transferring its interest to the Port and simultaneously transferring its residual common carrier rights and obligations to King County, the transfer of the real property interests in the Railbanking Segments will not be subject to Board jurisdiction. The proceedings relating to this transaction are:

- Docket No. AB-6 (Sub-No. 463X), *BNSF Railway Company – Abandonment Exemption – In King County, Washington*, addressing BNSF's request to abandon the Woodinville Subdivision from milepost 0.00 in Woodinville to approximately milepost 7.30 in Redmond (the "**Redmond Spur**"), which connects with and crosses

the North Railbanking Segment (defined below) at milepost 23.80 of the Woodinville Subdivision. Concurrently with this Joint Response, King County is filing its statement of willingness to assume financial responsibility as the trail sponsor for this segment pursuant to Section 8(d) of the National Trails System Act, codified at 16 U.S.C. §1247(d), and 49 C.F.R. §1152.29 (collectively, the “**Railbanking Legislation**”).

- Docket No. AB-6 (Sub-No. 464X), *BNSF Railway Company – Abandonment Exemption – In King County, Washington*, addressing BNSF’s request to abandon the Woodinville Subdivision from milepost 5.00 in Kenndale north to milepost 10.60 in Wilburton (the “**South Railbanking Segment**”). Concurrently with this Joint Response, King County is filing its statement of willingness to assume financial responsibility as the trail sponsor for this segment pursuant to the Railbanking Legislation.
- Docket No. AB-6 (Sub-No. 465X), *BNSF Railway Company – Abandonment Exemption – In King County, Washington*, addressing BNSF’s request to abandon the Woodinville Subdivision from milepost 11.25 near Wilburton north to milepost 23.80 in Woodinville (the “**North Railbanking Segment**”). Concurrently with this Joint Response, King County is filing its statement of willingness to assume financial responsibility as the trail sponsor for this segment pursuant to the Railbanking Legislation.

4. The Port will grant to King County a public multipurpose easement to allow King County to use the Railbanking Segments for an interim trail pursuant to the Railbanking Legislation, providing King County with the property rights necessary to exercise its rights under the respective

Notices of Interim Trail Use to be issued in the three abandonment proceedings listed in Item 3.⁵ No STB authorization will be required for the grant of this easement.

5. King County and BNSF will enter into a Trail Use Agreement (relating to all 3 Railbanking Segments) allocating the responsibilities of King County and BNSF under the Railbanking Legislation to effect the development and use of a trail and other public facilities.

6. BNSF will transfer its right and obligation to reactivate rail service on the Railbanking Segments to King County. The proceeding relating to this transaction will be Finance Docket No. 35148, *King County, Washington, Acquisition Exemption – BNSF Railway Company*, and will consist of King County's request for an exemption from the requirements of 49 U.S.C. §10901 to acquire from BNSF the residual common carrier rights and obligations, including the right to reinstitute rail service in the future, over the North Railbanking Segment, the South Railbanking Segment and the Redmond Spur. King County will shortly be filing its Petition for Exemption to acquire BNSF's restart right

A map of the Railbanking Segments, Wilburton Segment and Freight Portion is attached as **Exhibit B**.

THE GNP RAILWAY, INC., MODIFIED CERTIFICATE IS NOT RELATED IN ANY WAY TO THE BNSF TRANSACTIONS.

The Board has issued a modified certificate of public convenience and necessity for a 0.20 mile segment of the former Woodinville Subdivision that is not contiguous to the Railbanking Segments, the Wilburton Segment or the Freight Portion. *GNP Rly Inc – Modified Rail Certificate – In Snohomish County, WA*, STB Finance Docket No. 35151 (Service Date August 13, 2008). The

⁵ The multipurpose easement will also apply to the Wilburton Segment, such that King County will be able to establish a trail and maintain connections to the national rail system through the entirety of the Wilburton Subdivision between milepost 50 and milepost 238.

putative GNP operation is not part of the transactions described above, and has not been either sought or sanctioned by BNSF, the Port or King County. In its entirely separate and wholly independent proceeding, GNP sought a Modified Certificate of Public Convenience and Necessity to lease and operate service over an already-abandoned segment of the Woodinville Subdivision owned by Snohomish County, Washington, from milepost 39.10 to milepost 39.30. A map of the segments addressed in GNP's proceeding and in the *BNSF Snohomish Abandonment* is attached hereto as **Exhibit C.**

GNP's statements in the record of Finance Docket No. 35151 that its 0.20 mile segment connects to BNSF's active rail line are incorrect. GNP did not clarify what interest it has or intends to obtain in the segment between milepost 39.00 and 39.10, and BNSF has consummated abandonment of the segment from milepost 38.25 to milepost 39.00.⁶ Accordingly, there is no national rail system connection at the south end of GNP's 0.20 mile segment.

GNP was not and is not a party to any of the existing transactions involved in the three-way BNSF-Port-King County deal. Those transactions give GNP no right or interest in the Freight Portion, the Railbanking Segments or the Wilburton Segment. GNP cannot connect to the national rail system, the segments included in the *BNSF Snohomish Abandonment* or any of the segments comprehended in the BNSF Transactions from the south end of the 0.20 mile segment for which GNP sought a modified certificate of public convenience and necessity. Therefore, GNP's assertions that it is able to connect to lines south of its leased segment in the City of Snohomish are incorrect.


⁶ *The Burlington Northern and Santa Fe Railway Company – Abandonment Exemption – In Snohomish County, WA, Notice of Consummation* (Filed Date July 21, 2008)

CONCLUSION

BNSF, the Port and King County have endeavored through this Joint Response to present a full picture of the BNSF Transactions and related Board actions and trust that the information provided has been responsive to the Board's request in the *August 29 Notice*.

Once the BNSF Transactions are consummated, BNSF will have divested itself of all of its interest in the Railbanking Segments, the Wilburton Segment, and the Freight Portion. The Port will own the fee interest and physical assets associated with each segment. Rail service over the Freight Portion will be provided by a third party operator pursuant to an exclusive freight easement. King County will be the trail sponsor for the Railbanking Segments pursuant to the Trail Use Agreement it has negotiated with BNSF, and subject to the terms of the multipurpose public easement the Port will grant to it. King County will also have acquired the right to reinstitute service over the Railbanking Segments.

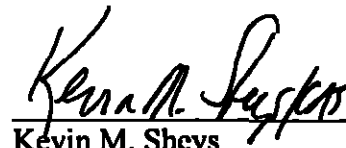
As described above, the filings previously submitted, submitted concurrently with this Joint Response or to be submitted provide to the Board all of the notices, petitions and requests necessary to prosecute the regulatory actions to support the BNSF Transactions. King County will shortly be filing its Petition for Exemption to acquire BNSF's restart right over the Railbanking Segments. Once a third-party operator for the Freight Portion has been selected, that operator will obtain such Board authorization as necessary to provide service over the Freight Portion, and we will supplement this Joint Response as necessary as further developments may require.


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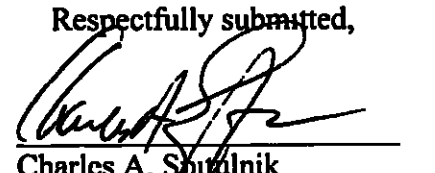
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EXHIBIT A

PROCEEDINGS AND PLEADINGS

Proceeding and Pleadings	Comment
1 Finance Docket No. 35128, <i>The Port of Seattle – Acquisition Exemption – Certain Assets of BNSF Railway Company</i> (Service Date June 20, 2008).	
(a) Port's Notice of Exemption Pursuant to 49 C.F.R. §1150.31 (filed June 4, 2008)	This exemption became effective on July 4, 2008.
(b) Port's Motion to Dismiss Notice of Exemption (filed June 4, 2008)	This Motion is pending before the Board.
2 Docket No. AB-6 (Sub-No. 463X), <i>BNSF Railway Company – Abandonment Exemption – In King County, Washington</i> (Redmond Spur, mileposts 0.00 to 7.30)	
(a) BNSF's Historic and Environmental Reports (filed August 13, 2008)	
(b) BNSF's Notice of Exemption (filed September 8, 2008)	
(c) BNSF's Petition for Exemption from 49 U.S.C. §10904 (filed September 8, 2008)	
(d) Request of King County, Washington, for Interim Trail Use Pursuant to 49 CFR 1152.29	Filed concurrently with this Joint Response
(e) Reply of King County, Washington, to BNSF's Petition for Exemption from 49 U.S.C. §10904	Filed concurrently with this Joint Response
3. Docket No. AB-6 (Sub-No. 464X), <i>BNSF Railway Company – Abandonment Exemption – In King County, Washington</i> (South Railbanking Segment, mileposts 5.00 to 10.60)	
(a) BNSF's Historic and Environmental Reports (filed August 13, 2008)	

Proceeding and Pleadings**Comment**

- (b) BNSF's Notice of Exemption (filed September 8, 2008)
 - (c) BNSF's Petition for Exemption from 49 U.S.C. §10904 (filed September 8, 2008)
 - (d) Request of King County, Washington, for Interim Trail Use Pursuant to 49 CFR 1152.29 **Filed concurrently with this Joint Response**
 - (e) Reply of King County, Washington, to BNSF's Petition for Exemption from 49 U.S.C. §10904 **Filed concurrently with this Joint Response**
4. Docket No. AB-6 (Sub-No. 465X), *BNSF Railway Company – Abandonment Exemption – In King County, Washington* (North Railbanking Segment, mileposts 11.25 to 23.80)
- (a) BNSF's Historic and Environmental Reports (filed June 30, 2008)
 - (b) BNSF's Petition for Exemption (including petition for exemption from 49 U.S.C. §10904) (filed August 11, 2008) **Notice of Petition published in 73 Fed.Reg. 51047 (August 29, 2008)**
 - (c) Request of King County, Washington, for Interim Trail Use Pursuant to 49 CFR 1152.29 **Filed concurrently with this Joint Response**
 - (d) Reply of King County, Washington, to BNSF's Petition for Exemption from 49 U.S.C. §10904 **Filed concurrently with this Joint Response**
5. Finance Docket No. 35148, *King County, Washington – Acquisition Exemption – BNSF Railway Company*, Petition for Exemption from 49 U.S.C. §10901 **Will be filed shortly following this Joint Response**

EXHIBIT B

MAP OF THE SEGMENTS INCLUDED IN THE BNSF TRANSACTIONS

[attached hereto]

BNSF Woodinville Subdivision (N. Renton to Snohomish)

Existing Rail Lines and Regional Trails

- Subject Corridor
- Other Regional Rail Lines
- Regional Bike Routes/Trails
- Metropolitan Transportation System
- Abandoned MP 38.25-39.00 (eff 07/21/2008)
- Abandoned MP 10.60-11.25 (eff 03/07/2008)
- Abandoned and Sold

0 1.5 3 6 9 Miles

May 31, 2006

Puget Sound Regional Council

Abandoned and Sold

- Milepost 39.00 to Milepost 47.11
Abandoned 5/6/1986
- Milepost 47.11 to Milepost 57.36
Abandoned 3/23/1972
- Milepost 39.10 to @57.36 Sold to
Snohomish County

Milepost 39.10 to Milepost 39.26
GNP/Snohomish County lease -- 0.85 mile from
end of national rail system at Milepost 38.25

Snohomish

End of Freight Portion
MP 38.25

- Milepost 38.25 to Milepost 39.00
Abandoned 07/21/08
- Sale of real estate to City of Snohomish
(MP 38.25 to MP 39.10) soon to close

Beginning of AB-6 (Sub-No 463X)
Milepost 0.00

End of AB-6 (Sub-No. 463X)
Milepost 7.30

Beginning of Freight Portion
Milepost 23.80

End of AB-6 (Sub-No. 465X)
Milepost 23.80

Beginning of AB-6 (Sub-No. 465X)
Milepost 11.25

End of AB-6 (Sub-No. 464X)
Milepost 10.60

Beginning of AB-6 (Sub-No. 464X)
Milepost 5.00

Kitsap

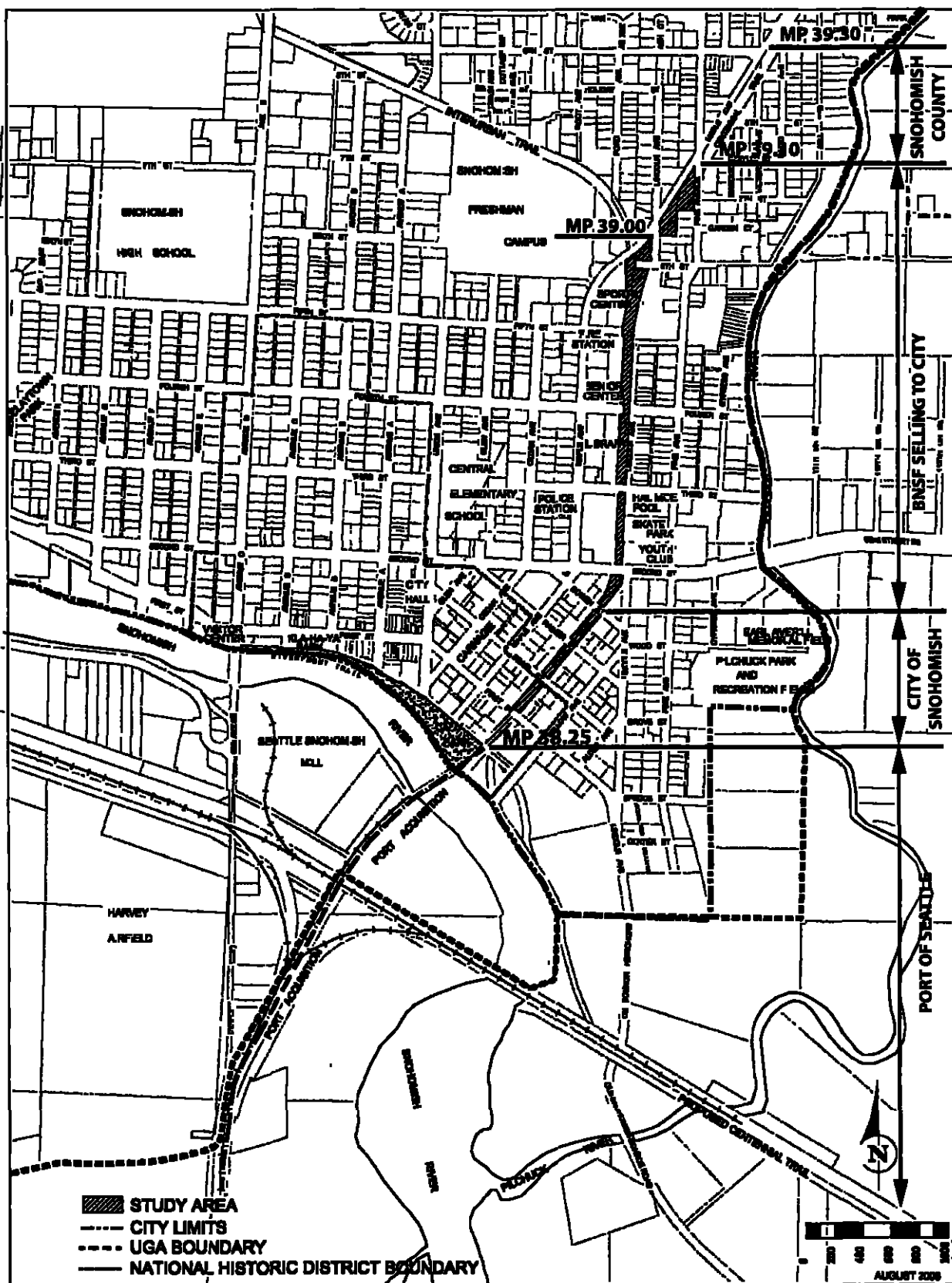
King

Pierce

EXHIBIT C

MAP OF SEGMENTS NOT INCLUDED IN THE BNSF TRANSACTIONS

[attached hereto]



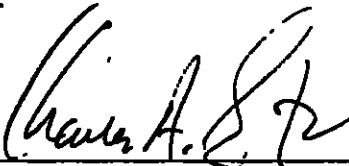
CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing
RESPONSE OF BNSF RAILWAY COMPANY, PORT OF SEATTLE AND KING COUNTY,
WASHINGTON TO REQUEST FOR INFORMATION IN DOCKET NO. AB-6 (SUB-NO.
465X) to be served by first class mail, postage prepaid upon the following:

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Dated this 18th day of September, 2008.



Charles A. Spitulnik